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ALEXANDER L. STEVAS
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No. 83-2163

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

GARTER-BARE COMPANY, a limited partnership, and KNUT L. BJORN-LARSEN,

Petitioners,

vs.

MUNSINGWEAR, INC., a Corporation,

Defendant and Respondent.

AFFIDAVIT OF ROBERT W. DRISCOLL IN SUPPORT OF APPLICATION FOR ORDER, TO WHICH ALL PARTIES CONSENT. GRANTING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, VACATING JUDGMENTS BELOW, AND REMANDING CASE WITH INSTRUCTIONS TO DISMISS AS MOOT

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October 26, 1984

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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vs.

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AFFIDAVIT OF ROBERT W. DRISCOLL
IN SUPPORT OF
APPLICATION FOR RULING ON
PETITION FOR A WRIT OF CERTIORARI
GRANTING PETITION, VACATING THE
JUDGMENTS BELOW AND REMANDING WITH
INSTRUCTIONS TO DISMISS AS MOOT
to the United States Court of Appeals
for the Ninth Circuit

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

ROBERT W. DRISCOLL, being first duly sworn, deposes and says:

1. I am one of the attorneys for Petitioners GARTER-BARE COMPANY and KNUT L. BJORN-LARSEN, plaintiffs and appellants in the litigation involved before this

Honorable Court on the petition of Petitioners for writ of certiorari, and I am familiar with the records, pleadings and files herein and with the status of settlement negotiations between the parties to said litigation;

2. On October 26, 1984, after months of extensive negotiations, a complete settlement of this 12-year-old litigation was reached between the ligitants, and documents containing said definitive settlement were executed;

3. It is essential, if the settlement of this protracted litigation is to accomplish the preservation of the rights of Petitioners, that this Honorable Court summarily grant said Petition for Certiorari, vacate the judgments below, and remand with instructions to dismiss for mootness;

4. The importance of preserving the

rights of Petitioners is to enable Petitioners to attempt to salvage and resurrect certain rights which they feel were impaired by, and were among the principal reasons motivating their petition for certiorari for relief from, the lower courts' rulings, which rulings included the grant of a new trial on certain issues. As part of the settlement, Petitioners have given up their right to a new trial so that they can pursue said efforts to obtain special legislation. Such special legislation would only be enacted by the necessary congressional majorities if it were in the public interest. Affiant believes said legislation would be rendered exceedingly more difficult, if not impossible, of attainment if this Honorable Court were to deny certiorari.

5. A retrial of this extensive litigation, if the case was not settled certiorari were denied, would unduly burden

the federal court system, cause the expenditure by both sides of enormous additional legal effort and expense, would prolong the uncertainty and defer the rights of all parties, and would frustrate the policy of promoting amicable resolution of litigation.

6. These extraordinary circumstances justify this Honorable Court's immediate consideration of the accompanying application, without any intermediate application to the lower courts, since the probabilities are that this Court would otherwise act on the petition for certiorari before said intermediate application(s) could be completed and acted upon, with the consequence that the benefits which Petitioners hope to obtain from the settlement would be jeopardized and their efforts to salvage by settlement what they believe they would otherwise have otherwise

obtained by pursuit of this marathon litigation would be frustrated;

Wherefore, affiant respectfully prays that this Honorable Court summarily grant the pending petition for writ of certiorari, vacate the judgments below, and remand the case with instructions to dismiss for mootness, and for such other relief as is appropriate.

_____

Robert W. Driscoll

Subscribed and sworn to before me this 26th day of October, 1984.

_____

Notary Public in and for said County and State.